IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION (L) NO.284 OF 2005

M.G.Shirhatti. .. .. Petitioner
v/s.
University of Mumbai & others. .. Respondents

Mr.Y.S. Jahagirdar, Sr.Advocate with Mr.Ashok D. Shetty and Ms.Rita Joshi for petitioner.

Mr.Mohan Naik, AGP for res.Nos.1 & 2.

Mr.S.K.Srivastava for res.No.6.

Mr.S.K.Talsania with Ms.Nandini Menon for res.No.7.

Mr.P.K.Dhakephalkar for intervenor.

CORAM : H.L. GOKHALE &
S.C.DHARMADHKARI, JJ.

DATED : 10TH FEBRUARY 2005

ORAL ORDER : (Per H.L. Gokhale, J.)

1. Heard Mr.Jahagirdar in support of this petition. Mr.Naik, AGP appears for respondent Nos.1 and 2. Respondent Nos.3, 4 and 5 are members of the Committee of Enquiry appointed by respondent No.1-University. They are served and being members of the Committee, they have not engaged any Advocate to represent them. Mr.Talsania and Ms.Menon appear for respondent No.7. Respondent No.8 is served.

2. The petitioner is the Principal of respondent No.6-Lalalajpat Rai college. The college is affiliated to respondent No.1-University which is governed under the provisions of the Maharashtra Universities Act, 1994. Respondent No.7 is a Lecturer working in respondent No.6-college. She made a complaint of alleged sexual harassment against the petitioner. This has led to the constitution of the Committee of Enquiry which consists of respondent Nos.3 to 5 headed by Mrs.Justice Baam (respondent No.3), a retired Judge of this Court. The petitioner has been suspended vide order dated 10.12.2004 issued by respondent No.6-college in pursuance of the interim order dated 25.11.2004 passed by the Committee. The present petition seeks to challenge the enquiry being held by this Committee on various grounds, though the principal grounds are firstly that respondent No.4, who is a Professor in the University, has a bias against the petitioner and, therefore, she should not be continued in the Committee. Secondly, it is submitted that under the said Act the Vice Chancellor was not empowered to issue the Directions under which the enquiry is being held

and that the second set of Directions amending the earlier Directions are also bad in law. The petition challenges the suspension order as well.

3. As far as the bias alleged against respondent No.4 is concerned, it is submitted that way back on 8th February 2002 when respondent No.4 was proposed for the post of Dean of faculty of Law, the petitioner is reported to have opposed her nomination. Respondent No.4 was selected as the Dean of faculty of Law in spite of his opposition. It is further submitted that respondent No.4 is a member of the Bombay University and College Teachers' Union (BUCTU) and that this Union had taken a lead in raising the grievances of the 7th respondent concerning sexual harassment. A handout of BUCTU dated 10.9.2004 is relied upon for that purpose. Now, as far as the first ground, namely, that respondent No.4's nomination was opposed by the petitioner is concerned, what is material to note is that firstly this was way back in February 2002. This Committee of Enquiry including respondent No.4, came to be constituted some two and half years thereafter by an order passed on 14th September 2004 by a Division Bench of this Court in Writ

Petition (Lodging) No.2493 of 2004. The petitioner was a respondent in that petition being respondent No.5. The petition was filed by respondent No.7 making a grievance with respect to the then Chairman of the Enquiry Committee. The said Chairman was replaced under this order passed by the Division on 14th September 2004. Surely, if the petitioner herein (respondent No.5 to that petition) had any objection to respondent No.4 becoming a member of this Committee, he ought to have raised his grievance at that point of time.

4. Similarly if a circular issued by the BUCTU on 10th September 2004 is sought to be relied upon to point out that respondent No.4 was an active member of this Union and, therefore, she ought to be kept out of this Committee, surely, it was fresh in the mind of the present petitioner when the matter was heard on 14th September 2004. He has not raised any objection on either of the two grounds at that point of time. Respondent No.4 is a Professor of law and like so many other Professors, she is a member of the BUCTU. Merely because she is a member of the Union, it cannot be alleged that she has a bias against the petitioner. Similarly it cannot be presumed that

she is entertaining any bias against the petitioner merely because he opposed her nomination some two and half years before. In any case, if that was the apprehension of the petitioner, he ought to have raised it in the same manner in which respondent No.7 raised her grievance with respect to the Chairman of the earlier Committee. The Division Bench of this Court having applied its mind, constituted the Committee by its order dated 14th September 2004. The Committee has proceeded further. The petitioner has filed his reply to the complaint and appeared before the Committee Now, it is not fair on the part of the petitioner to raise this grievance nearly six months thereafter. The objection is an afterthought and is raised only to embarrass a member of the Committee and delay its work. We deprecate this attitude of the petitioner in no uncertain terms. We do not find any substance in this allegation of bias and we reject the same at the outset.

5. The second grievance of the petitioner is that the Vice Chancellor did not have the power to issue the Directions laying down the rules with respect to the grievances of sexual harassment.

The Directions in this behalf were first issued on 31st August 2004. That circular became necessary in view of the two petitions which were filed in this Court. One of them was Writ Petition No.385 of 2004 wherein on 23rd February 2004, a Division Bench of this Court recorded the statement of the Counsel of the University that appropriate rules of discipline concerning the questions arising out of cases of sexual harassment will be framed by the University. The second petition was the petition of respondent No.7 herself being Writ Petition (Lodging) No.2192 of 2004. In the order passed on 24th August 2004 on Writ Petition (Lodging) No.2192 of 2004, a statement of the Counsel of the University was recorded that the University had prepared the draft directions providing rules in this behalf and that the Vice Chancellor will issue the necessary orders under Section 14(8) of the Maharashtra Universities Act, 1994. It is material to note that the petitioner herein was a party to that petition being respondent No.5. Section 14 of the Maharashtra Universities Act, 1994 lays down the Powers and Duties of the Vice Chancellor. Section 14(8) thereof gives powers to the Vice Chancellor to deal with the situation which requires an urgent

attention. Section 14(8) reads as follows:-

> " (8) Where any matter is required to be regulated by the Statutes, Ordinances or Regulations, but no Statutes, Ordinances or Regulations are made in that behalf the Vice-Chancellor may, for the time being, regulate matter by issuing such directions as he thinks necessary, and shall, at the earliest opportunity thereafter, place them before the Management Council or other authority or body concerned for approval. He may, at the same time, place before such authority or body for consideration the draft of the Statutes, Ordinances or Regulations, as the case may be, required to be made in that behalf. "

6. Thus, in view of the two petitions and the orders passed therein, the Vice Chancellor deemed it necessary to issue the necessary directions. They were, of course, placed before the Management Council and in its meeting held on 31st August 2004 itself, the Management Council gave its approval to it. Thus, these directions have been issued by following due process of law. The

objection is to the second directions issued by the Vice Chancellor later on i.e. 15th October 2004. It is, however, material to note that as recorded in the circular of 15.10.2004, the same became necessary because of the directions given by the High Court on 14.9.2004 in Writ Petition (Lodging) No.2493 of 2004 filed by respondent No.7 to which this petitioner was party. It is also recorded in the circular dated 15.10.2004 that it is issued as per the request of the Management Council in its meeting of 17.9.2004. This was to vest the powers of Management Council in this behalf with the Vice Chancellor. Earlier the Management Council was to appoint the Enquiry Committee. Now the power will be with the Vice Chancellor.

7. The earlier directions given by the circular of 31st August 2004 had a clause viz. Clause No.7 which empowered the Committee to be constituted by the Vice Chancellor to look into these kind of grievances and to recommend whether the person against whom a complaint of sexual harassment is made should be placed under suspension. The subsequent circular dated 15th October 2004 had a new clause viz. Clause No.6

which provided that the Committee shall itself decide whether the person against whom a complaint of sexual harassment is made should be placed under suspension. Clause 5 of this new circular required the Management to comply with the directions issued by the Committee for placing anybody under suspension or prohibiting him from entering the premises. As far as the power to issue necessary order of punishment is concerned, it was already provided in Clause 4 of the earlier circular dated 31st August 2004 and is retained in Clause 4 of the new circular. Clause 5 of the earlier circular required the Committee to place its report before the Management Council and the Management Council was to take a decision for imposing a penalty. Under Clause 6 of the earlier circular dated 31st August 2004, the Management Council's decision was to be communicated to the colleges and the decision was to be complied with by those colleges. Now the decision is to be sent to the college and it has to comply with it. Mr.Jahagirdar, learned Counsel appearing for the petitioner, submitted that Clauses 5 and 6 of the new circular dated 15th October 2004 introduce all together new rules. We are not in a position to accept this submission inasmuch as the earlier

circular dated 31st August 2004 gave the power to the Committee to recommend dismissal of the employee concerned and the new circular states that it may impose the same. This being so, the new directions are only appropriate modification of the earlier circular. There is undoubtedly a change brought in but it is essentially to streamline the procedure and to see to it that the decision of the Committee is implemented at the earliest and there is no hindrance of any Authority. The new circular states that the new directions are to operate in supersession and in modification of earlier directions.

8. Mr.Jahagirdar, learned Counsel appearing for the petitioner, submits that under Section 28(c) of the Maharashtra Universities Act, the power to amend an ordinance and prepare a statute etc. rests with the Management Council alone and, therefore, the second circular was in derogation of powers of Management Council and outside the powers of the Vice Chancellor. He, however, ignores the provision of Section 28(ee) of that very Act which empowers the Management Council to delegate any of its powers, except the power to make, amend or repeal ordinances to the Vice

Chancellor. In the present case, the Vice Chancellor has issued the second circular containing directions which modify the earlier directions. This circular is issued as per the request of the Management Council itself made in its meeting of 17th September 2004 which is recorded in this circular. The Management Council itself is agreeable to these new directions. Besides, it is not an ordinance and that being so, even on that ground, the action taken by the Vice Chancellor on the second occasion cannot be faulted.

9. Mr.Talsania, learned Counsel for respondent No.7 (complainant) drew our attention to her complaint and submitted that the grievances were serious enough to warrant the suspension. We do not propose to go into the merits of the complaint since Mr.Jahagirdar has also not made any submissions in that behalf. The Committee is headed by a retired Judge of this Court and it will surely go into the same without any bias and decide it expeditiously. However, as far as the order of suspension is concerned, the Committee deemed it necessary from the point of view of fairness and also so that the witnesses are

produced without any fear of interference since the petitioner was the Administrative Head of the college. We cannot fault the reasoning in any way.

10. In view of what is stated above, we do not find substance in any of the objections raised in the petition. The constitution of the Committee and its decision to suspend cannot be stated to be without the authority of law or otherwise bad.

The petition is, therefore, dismissed.

11. Mr.Dhakephalkar has appeared for the Association of non-Government colleges and has moved a notice of motion raising similar objections. It is, however, material to note that Mr.Shrivastav appearing for respondent No.6-college has stated that it has no objection whatsoever either to the constitution of the Committee or its decision to suspend the petitioner. What we find is that the impugned Directions were issued by the Vice Chancellor to deal with a particular category of problems as directed in the judgment in the case **Vishaka and others vs. State of Rajasthan & others reported in (1997) 6 SCC 241**. The Vice Chancellor issued the necessary circular in view of the directions

of this Court and after due deliberations with the Management Council. It is only a particular area of problem viz. sexual harassment which was required to be separately dealt with has been governed in this circular since there was no ordinance, regulation or statute governing it. The circular is, in no way, outside the powers of the Vice Chancellor under the Statute. A number of petitions were coming up before the Court and, therefore, as per the judgment in **Vishaka's case** (supra), orders were passed by this Court and in

view of the urgency, the directions were issued by the Vice Chancellor. The directions deal with only the subject of sexual harassment at place of work and not merely the teachers, but students, other employees, and members of Management are also covered under it. When a complaint is against a high ranking person like a Principal, surely the action will have to be taken at the level of the University and without any hindrance by any Authority. Hence, the powers are bestowed with the Vice Chancellor and the Enquiry Committee. In the event the Association of non-Government colleges wants to bring about any modification in this behalf, it will be open to it

to move the appropriate Authority of the University such as the Senate. We do not find any merit in the Notice of Motion for intervention and the same stands dismissed.

(H.L. GOKHALE, J.)

(S.C.DHARMADHIKARI, J.)